

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
SHERMAN HOUSER	:	NO. 08-759

MEMORANDUM AND ORDER

Gene E.K. Pratter, J.

February 9, 2009

Sherman Houser stands charged by way of a grand jury indictment with conspiracy to commit armed bank robbery, armed bank robbery and carrying and using a firearm during a crime of violence, all arising out of a robbery of a branch of the Bank of America located at 14425 Bustleton Avenue in Philadelphia on November 6, 2006. Mr. Houser entered a not guilty plea, and his trial is scheduled to start on June 1, 2009.¹

Mr. Houser, through counsel, has filed several pre-trial motions to which the Government has responded and which the Court discusses and resolves as set forth below.²

¹ Trial was initially set for March 9, 2009. Mr. Houser moved to continue the trial date (Doc. No. 13), which motion the Government did not oppose. The Court granted this motion by order entered January 30, 2009 (Doc. No. 20). Trial is now scheduled to commence June 1, 2009.

² Several of the motions are not controversial. Mr. Houser has filed a Motion For Early Disclosure Of Witness Statements (Doc. No. 11). The Government's Omnibus Response (Doc. No. 18) states that it has already provided to defense counsel the transcript of the testimony of the one witness called to testify to the grand jury. The Government also states it has provided all statements of witnesses presently known to the Government and will continue to do so as to all others who become known to the Government. Indeed, while delivering a generalized description of the purpose of discovery and discovery obligations in federal prosecutions, the Government takes pains to make clear that it has supplied extensive materials to the Defendant

Defendant's Motion For A Bill of Particulars (Doc. No. 10)

Mr. Houser asks the Court to exercise its discretion under Federal Rule of Criminal Procedure 7(f) to require the Government to file a Bill of Particulars concerning the charges stated in the indictment. According to Mr. Houser, he seeks “narrowly focused” information detailing facts surrounding the alleged conspiracy in which Mr. Houser was involved so that he can adequately prepare his defense and minimize surprises at trial. The Government argues that Mr. Houser “totally misconceives the purpose of [a bill of particulars]” and asserts that any legitimate need for information beyond the indictment itself will be satisfied by reviewing the discovery that the Government has agreed to supply to the defense. The Government disputes

already. Accordingly, having no reason whatsoever to question the good faith assurances of the Government, the Court finds this Motion (Doc. No. 18) to be moot.

Mr. Houser also filed a Motion For Leave To File Additional Motions (Doc. No. 12), a motion the Government does not oppose. Therefore, the Court grants that motion, provided that any such additional motion(s) shall be filed only after a good-faith effort is made to try to resolve the issue in dispute by, between or among counsel.

Mr. Houser's third motion is for an order requiring the preservation of notes and tapes (Doc. No. 15). Although the Government takes certain, not inappropriate, pains to outline its perspective on the legal landscape surrounding this issue, ultimately, the Government states that it will “request” all agents to preserve their notes of interviews with witnesses in this case. While the Government's undertaking may not be articulated in precisely the language the Defendant proposes, the Court perceives no current dispute on this point requiring judicial resolution. The Court's Order will detail the Government's obligation in this regard.

Mr. Houser also moves for an order requiring the Government to provide notice of its intention to use other crimes, wrongs or acts evidence. (Doc. No. 16). The Government has responded by stating that it “is contemplating the use of 404(b) evidence” and volunteers to give Mr. Houser notice at least two weeks prior to trial. Thus, while the Court's order will contain greater specificity, there is no need at this juncture to discuss the legal issues attendant to such evidence in this Memorandum.

The remainder of this Memorandum will address the issues raised by Mr. Houser in the motions that are substantively in dispute.

the proposition that the indictment is too vague to notify Mr. Houser of the charges against him and certainly is not so imprecise as to put Mr. Houser at risk of double jeopardy. Even if a bill of particulars served a function similar to that of discovery, the Government states that the discovery will provide the salient facts surrounding the robbery that is the core of this prosecution.

A fair reading of the Indictment returned by the grand jury here is indeed adequate to give appropriate notice to Mr. Houser so that he can proceed to prepare for trial well within the expectations of due process. Here, as well, the Government has provided considerable discovery information to the defense that likely will obviate any lingering uncertainty. Therefore, the Court will deny the motion for a bill of particulars, without prejudice to the Defendant to renew the motion after a review of the materials supplied by the Government.

Motion To Inspect Grand Jury Minutes (Doc. No. 14)

Notwithstanding the Government's agreement to provide to the defense the notes of grand jury testimony and any exhibits, Mr. Houser's motion also asserts that he needs to review the grand jury minutes in order to double check the procedures followed, including the grand jury voting record. Mr. Houser suggests no basis whatsoever for concern for some procedural misstep in the grand jury. Indeed, he candidly admits that he wants "to determine whether he has grounds for a motion to dismiss the Indictment for reasons of illegal and/or improper matters occurring before the Grand Jury."

In the absence of any allegation of impropriety in either the composition of the grand jury or its proceedings, this motion amounts to little more than a "fishing expedition" that surely provides no justification for running afoul of Rule 6(c) of the Federal Rule of Criminal

Procedure. Rule 6©, as the Government correctly points out, confirms that the non-public nature of a grand jury vote is to be preserved unless disclosure is authorized by the court. Before this Court will entertain a motion to reveal the grand jury vote or minutes beyond witness testimony, the motion must at least present some colorable, tailored reason for concern about the integrity of the process. See United States v. Mechanik, 475 U.S. 66, 75 (1986); United States v. Deffenbaugh Industries, Inc., 957 F.2d 749, 756 (10th Cr. 1992). Here, no such particularized, discrete showing of need has been made. Therefore, the motion will be denied.

BY THE COURT:

GENE E.K. PRATTER
United States District Judge

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ORDER

AND NOW, this 9th day of February, 2009, upon consideration of the defense motions expressly referred to below and of the Government's Omnibus Response (Doc. No. 18), for the reasons set forth in the accompanying Memorandum, it is hereby **ORDERED** as follows:

1. The Motion For Early Disclosure Of Witnesses Statements (Doc. No. 11) is held to be **MOOT** in light of the Government's representation that it has provided to defense counsel the statement of the witness who testified before the grand jury and will continue to provide copies of statements, if any, by any other persons that the Government learns of.

2. The Unopposed Motion For Leave To File Additional Motions (Doc. No. 12) is **GRANTED**, provided that prior to the filing of any such motions a good-faith effort is made to try to resolve the issue in dispute by, between or among counsel.

3. The Motion for Preservation of Notes and Tapes (Doc. No. 15), which the Government has not opposed, is **GRANTED** insofar as the Government is **ORDERED** to instruct all law enforcement personnel (from any jurisdiction) to secure and maintain any and all notes, recordings, audio or video tapes or other documentation (collectively "material") of

interviews of, or statements by, witnesses for this case so that such material may be promptly located and tendered for the Court's in camera review, if necessary.

4. The motion of Mr. Houser for an order compelling the Government to provide notice of an intent to use evidence of other crimes, wrongdoings or other acts (Doc. No.16) is **GRANTED** as unopposed, and the Government shall notify Defendant not less than two full weeks prior to trial of any evidence concerning Defendant's other crimes, wrong-doings or acts such as would implicate F.R.Ev. 404(b) and/or 608(b).

5. The Motion For A Bill of Particulars (Doc. No. 10) is **DENIED** without prejudice.

6. The Motion To Inspect Grand Jury Minutes (Doc. No. 14) is **DENIED**.

BY THE COURT:

GENE E.K. PRATTER
United States District Judge